



MEMORANDUM

To: California State Lottery Commission **Date:** June 27 , 2007

From: Joan M. Borucki
Director

Prepared By: Donald J. Currier, Chief Counsel
Legal Office

Subject: Item 9(b) - Approval of Amendments to Retailer Regulations regarding Duties of the Director, Applications for Retailer Contracts, and Contract Sanctions by the Lottery

ISSUE

Should the California State Lottery Commission (Commission) adopt amendments to the California Lottery's Retailer Regulations to: 1) clarify the definition of "Director;" 2) technical change of changing the word "on" to the word "or;" and 3) give Security and Law Enforcement tools, in addition to termination, to enforce California State Lottery (Lottery) regulations.

RECOMMENDATION

Lottery staff recommends that the Commission adopt the proposed amendments. The proposed changes address three separate problems.

The first amendment defines "Director" in the regulations as the Director or a designee of the Director.

The second amendment is a technical change correcting a spelling error by changing "on" to "or."

The third amendment gives Lottery Security and Law Enforcement additional enforcement tools.

BACKGROUND

The primary purpose for the addition of language to the Retailer Regulations is to ensure agreement between the regulations and the practices of the California

Lottery. The Regulations require the Director to take most of the actions in our Retailer Regulations. In practice, most of the actions taken against retailers are implemented by designees, primarily the Deputy Director of Security and Law Enforcement and the Deputy Director of Sales and Marketing. By defining Director to mean Director or designee, the Regulations permit some of the actions to be taken by designees of the Director rather than the Director herself. This aids in the due process procedures of retailer appeals by showing that the Director is an impartial decision-maker concerning retailer appeals and is not simply reviewing her own initial decision of terminating the retailer's contract with the Lottery.

The second change is a simple technical change correcting a spelling error and replacing the word "on" with the word "or."

The third change is to give the California Lottery additional tools for dealing with enforcement of retailer compliance with Lottery Regulations. Currently, the Deputy Director for Security and Law Enforcement has only two options. He can either send a warning letter to the retailer or he may terminate the retailer's contract. There is no middle ground which will allow the Lottery to take action against a retailer while still protecting the business interest of the Lottery. This has led to decreased sales because the retailer's contracts are terminated while their appeal is pending. During the appeal process, the retailer is unable to sell Lottery products, thereby decreasing overall Lottery sales. Once the appeal is heard, if the retailer is approved for probation, it takes several more days before their Lottery terminal is reactivated, again causing a loss of income for both the Lottery and the retailer. This new addition will give the Lottery an intermediate sanction which will provide for a penalty that is more appropriately tailored to the violation.

DISCUSSION

The Retailer Regulations lay out the steps to be completed by a retailer applicant throughout the application process. The Regulations give the Director the authority and discretion to take specific actions during the retailer contracting process. Some of those duties might be more appropriately delegated by the Director to a Deputy Director or other designee. Defining "Director" to mean "Director/ Chief Executive Officer of the Lottery or his/her designee" gives the Director the ability to make delegations as he/she sees fit. This is particularly important in the context of retailer termination appeals, where the initial termination decision and any subsequent appeal must be made by separate decision makers. The ability to delegate will allow the Director more independence in the appeals process.

The second amendment simply changes the word "on" to the word "or."

The third amendment provides the Security and Law Enforcement Division with additional ways of dealing with Lottery retailers' misconduct. Presently, the

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remedies available to the Security and Law Enforcement Division are limited. These amendments will provide a middle ground which would allow Security and Law Enforcement to suspend a retailer short of terminating its contract. This will allow more retailers to continue in the business of selling Lottery tickets.

The proposed Regulation amendments are attached.

CALIFORNIA STATE LOTTERY

RETAILER REGULATIONS

1. PURPOSE

These Retailer Regulations are promulgated by the California Lottery (Lottery) Commission as authorized in the California Lottery Act, Government Code, Title 2, Division 1, Chapter 12.5, Article 5, to establish guidelines for examining the qualifications and criminal history of applicants and current Retailers as authorized in Article 4, and to establish requirements for Retailer compliance with the Lottery's Americans with Disabilities Act (ADA) program.

2. DEFINITIONS

- a. "Appeal" means the process initiated by a Retailer, applicant, or representative whereby he/she submits a written document to the Lottery appealing the Lottery's decision to disapprove an applicant or to terminate a Lottery Retailer contract.
- b. "Applicant" means a person, organization, or business entity applying for authorization to contract with the Lottery as a Lottery Game Retailer. The term shall include, but is not limited to, an owner, proprietor, partner, shareholder, franchisee, board member, managing and/or controlling officer or designee approved by the Lottery of an existing commercial establishment, corporation, franchise, public entity, trust association, partnership, joint venture, or a civic or fraternal organization, regardless of whether the individual is compensated or uncompensated.
- c. "Contract" means the written agreement entered into by and between the Lottery and the Retailer as authorized in and pursuant to these Regulations.

~~d. "Director" means Director/Chief Executive Officer of the Lottery or his/her designee.~~

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~~e. "Documented criminal act" means a violation of federal or state law or regulation as investigated and substantiated by the Lottery. The Lottery may rely upon evidence developed by federal, state, or local government law enforcement officers, including law enforcement officers of a federal or state agency.~~

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~~f. "Notice" means a request, demand, consent, waiver, and/or other item required or permitted under these regulations or under contract or applicable law which must be made in writing and delivered to the party to be noticed.~~

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g. "Offense" means conduct the respect to which a disciplinary action has been taken against an applicant by a federal or state administrative agency.

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h. "Probation" means a period of time, set by the Director, during which a Retailer is authorized to sell Lottery products subject to complying with specific terms and conditions. Failure to comply with the terms and/or conditions can result in additional action against the Retailer's contract, including termination.

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i. "Retailer" or "Retailer location" means a person, organization, or business entity with whom the Lottery has entered into a Retailer contract and who is authorized to sell Lottery products to the public. The term shall also include, but is not limited to, an owner, partner, shareholder, franchisee, board member, managing and/or controlling officer, or designee approved by the Lottery, of an existing commercial establishment, corporation, franchise, public entity, trust, association, partnership, joint venture or a civic or fraternal organization, regardless of whether the individual is compensated or uncompensated.

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j. "Termination" means an action taken by the Director or a Retailer which has canceled the contract entered into by the Lottery and the Retailer.

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k. "Tickets" or "Lottery products" means Scratchers[®] Game tickets and/or computerized Lottery game ticket(s) or share(s), collectively, unless stated otherwise.

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l. "Tradestyle" means a category of Retailers, as determined by the Director, conducting a similar operation, organization, or business.

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m. "Warning letter" means a written notice from the Director to a Retailer advising of a violation of the provisions of the California Lottery Act, these Regulations, the Retailer contract, and/or Lottery policies, directives and/or instructions and informing the Retailer that the Director may take action against the Retailer's contract if an additional violation occurs.

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3. MINIMUM QUALIFICATIONS FOR RETAILER

A Retailer, at a minimum, shall meet the following qualifications:

- a. Shall be a person, organization or business entity including, but not limited to, an existing commercial establishment, corporation, franchise, public entity, trust association, partnership, joint venture, or civic or fraternal organization;
- b. Shall be associated with a person, organization, or business located and licensed in California and not exclusively engaged in the business of selling Lottery products;

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- c. Shall be at least 18 years of age;
- d. Shall not be a member of the Commission, an officer or employee of the Lottery, an officer or employee of the Office of the State Controller who is designated in writing by the Controller as having possible access to confidential Lottery information, programs or systems, or any Lottery contractor and his/her subcontractor excluded by the terms of their contract from playing Lottery games or any spouse, child, brother, sister, or parent of that person who resides within the same household as the person; and
- e. Shall be approved as suitable to be a Retailer pursuant to the Lottery application and selection process specified herein and as further developed and implemented by the Director pursuant to these Regulations.

4. APPLICATION FOR RETAILER CONTRACT

a. Forms, Information, and Documentation

- (1) The Director shall develop all forms and related documents including, but not limited to, an ADA survey and certification form, a contract application form, release form to obtain a credit report and/or any other background information relating to the applicant required for the Retailer application process. The application shall state that an applicant must disclose prior criminal arrests or convictions, even if the record was expunged as provided in Penal Code Section 1203.4, et seq., any pending criminal charges, and all personal and/or business-related disciplinary actions by a federal or state administrative agency. The application shall state that failure to disclose this information can result in disapproval of an application or termination of a contract.
- (2) An applicant shall, under penalty of perjury, complete, sign, date and submit all forms and related information and documents required by the Director. By signing and submitting the application form, the applicant agrees to allow the Lottery to conduct credit checks and a background investigation of the applicant to use in determining his/her suitability to be a Retailer.
- (3) An applicant shall respond to the disclosure requirements on the application form.
- (4) An applicant shall disclose all owners and their spouses owning or controlling ten percent (10%) or more interest of the business.
- (5) An applicant shall submit to the Lottery the required application and/or administrative fees, as determined by the Director.

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- (6) The applicant shall provide additional information if requested by the Lottery.

b. Fingerprints

- (1) The Director shall obtain fingerprints of applicants, as provided below, to examine the qualifications and criminal history of all applicants and current Retailers as provided in Government Code Section 8880.38. The Director or designee is authorized to develop policies and procedures to implement these provisions.
- (2) For sole proprietorship or partnership applicants, fingerprints shall be obtained from the owner and each partner who owns or controls ten percent (10%) or more interest in the business.
- (3) For corporate applicants who are publicly traded, i.e., a corporation whose stock is listed on a stock exchange in this State or in New York City, New York and who are required by law to file periodic reports with the Federal Securities and Exchange Commission, fingerprints shall be obtained from the managing or controlling officer or designee as approved by the Lottery.
- (4) For corporate applicants who are not publicly traded, as defined in (3), above, fingerprints shall be obtained from any person(s) who owns or controls ten percent (10%) or more in the corporate stock, the managing officers of the corporation, the chairman of the board or directors, and the board members.
- (5) For civic, fraternal, non-profit or public entity applicants, fingerprints shall be obtained from the person or person(s) authorized to act on behalf of the applicant.

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c. Selection of Retailers

- (1) The Director shall evaluate the applicant's qualifications including, but not limited to, competency, integrity, and character by considering among other things: (a) applicant's financial responsibility, solvency, integrity, and/or reputation; (b) accessibility of the place of business or activity to the public; (c) security of the premises; (d) sufficiency of existing Retailers to serve the public convenience; (e) current and/or projected volume of ticket sales; and (f) compliance with the ADA Section of these Regulations.

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- (2) The Director shall determine the number of Retailers by tradestyle which shall be sufficient to best serve the public convenience in the same geographical area.
- (3) The Director may, at his/her discretion, approve an applicant to sell specific Lottery products for a specified time period or on a probationary basis.
- (4) The Director shall notify the applicant of its selection as a Retailer and, if necessary, request other information and documents necessary to execute a contract.
- (5) If the applicant is selected to contract with the Lottery on a probationary basis at the Director's sole discretion, the Director shall notify the applicant of its selection and of the terms and conditions of the probation and request other information and documents necessary to complete the probationary contract process. The Retailer's failure to comply with the terms and conditions of the probation shall result in termination of the probationary contract. The selection of a Retailer for a contract on a probationary basis is not appealable under these Regulations.

d. Disapproval of Applicant to be a Retailer

- (1) In examining an applicant for consideration to contract with the Lottery, the Director shall consider the guidelines set forth in sub-Section 7.f of these Regulations along with the remaining provisions of this sub-Section 4.d.
- (2) Applicants may be disapproved for any of the following reasons:
 - (a) The applicant provided false or misleading information in the application process including, but not limited to, failure to disclose a prior criminal arrest or conviction even if the record was expunged as provided in Penal Code Section 1203.4 et seq. or failure to disclose a personal and/or business-related disciplinary action by a federal or state administrative agency.
 - (b) The applicant has sustained a criminal conviction or pled nolo contendere to an offense punishable as a felony, or to an offense punishable as a misdemeanor where the underlying facts in the original investigation and/or crime involve dishonesty, integrity, moral turpitude, or any gambling-related conduct.

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- (c) The applicant or its employee(s), representative(s), or agent(s) has (have) engaged in or permitted business practices or engaged in personal conduct that is dishonest, illegal, or criminal.
 - (d) The applicant has outstanding monetary delinquencies owed to any federal, state and/or local government(s).
 - (e) The applicant failed to supply fingerprint identification acceptable to the Lottery and classifiable by the Federal Bureau of Investigation or the California Department of Justice.
 - (f) The applicant failed to supply any information required on the application.
 - (g) An inspection of the applicant's business premises indicates that the premises: (i) are not suitable for the conduct of the sale of tickets; (ii) would not offer a secure ticket sales location; and/or (iii) are not readily accessible to the public.
 - (h) The applicant is the subject of a current prosecution, pending charges, has a conviction under appeal, and/or has an outstanding warrant against it.
 - (i) The applicant's competence, character, integrity, and/or reputation are such that it would not be in the best interest of the public or the Lottery for tickets to be sold by the applicant.
 - (j) The applicant's financial responsibility or solvency is such that it would not be in the best interest of the public or the Lottery for tickets to be sold by the applicant.
 - (k) The best interest of the Lottery would be undermined if the Lottery contracted with the applicant.
 - (l) The applicant's competence, character, integrity and/or reputation is such that to enter into a contract with the Retailer might jeopardize the integrity, security, honesty, or fairness essential in the operation and administration of the Lottery or Lottery games.
 - (m) The applicant is not in compliance with the Lottery's ADA compliance program.
- (3) If the applicant is disapproved as a Retailer, Lottery's notice of disapproval shall be mailed to the applicant and shall state: (a) the reason(s) and facts upon which the Lottery based its decision to

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disapprove applicant as a Retailer; (b) that applicant may file a written appeal, as provided in Section 8 herein; and, (c) the deadline for filing an appeal.

5. RETAILER CONTRACT TERMS AND CONDITIONS

- a. The contract between the Lottery and a Retailer shall contain such terms and conditions as determined by the Director including a provision requiring compliance with the Lottery's ADA compliance program.
- b. Retailer shall comply with all applicable laws, all regulations promulgated by the Commission, directives, policies, and/or instructions issued by the Director, and all contract terms and conditions, all of which may be amended, issued, or re-issued from time-to-time.

6. TERMINATION OF CONTRACT BY RETAILER

A contract may be terminated by the Retailer any time upon thirty (30) days written notice to the Lottery. The notice of termination shall be deemed filed with the Lottery upon the date postmarked by the U.S. Postal Service or the date stamped as received by the Lottery, whichever is earlier.

7. ~~CONTRACT~~ SANCTIONS BY LOTTERY

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- a. The Director, at his/her discretion and depending upon circumstances, may issue a warning letter to a Retailer directing or instructing it to take appropriate steps or otherwise be subject to action against the contract.

- b. If the Director determines that a Retailer shall be placed on probation the Retailer shall be notified, in writing, of the action, the reasons therefore, and the terms and conditions of the probation. A Retailer who agrees to probation waives the right to file an appeal if subsequently terminated for failing to meet the terms of probation. The terms of probation may include:

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(i) Suspension- A period of time in which the Lottery retailer is ineligible to sell Lottery products.

(ii) Monitoring Assessment Cost- The Deputy Director of Security and Law Enforcement of the California Lottery, when probation is considered, may estimate the reasonable cost of monitoring the retailer for compliance with the terms of probation and such cost may be passed on to the retailer as a required term of probation.

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(iii) Any other conditions reasonably related to protecting the integrity of the Lottery.

- c. Lottery may terminate a Contract upon thirty (30) days prior written notice unless exigent circumstances exist, as determined by the Director, in which

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case the Director, at his or her discretion, may terminate this Contract without notice or with a shorter notice period. The notice of termination shall state:

- (i) the effective date of the Contract termination; (ii) the law, regulation(s), and/or contract provision(s) violated; (iii) the facts upon which the Lottery relied for its decision to terminate; (iv) the Retailer may exercise its right to submit a written appeal as provided herein; and, (v) the final date for submitting a written appeal.
- d. The reasons for contract termination include those stated in the Retailer contract, addendum, and amendment(s), if any, and the following:
- (1) The Retailer has provided false or misleading information in obtaining a Retailer contract and Certificate of Authority including, but not limited to, failure to disclose a prior criminal arrest or conviction even if the record was expunged as provided in Penal Code Section 1203.4, et seq., or failure to disclose a personal or business-related disciplinary action by a federal or state administrative agency.
 - (2) The Retailer has sustained a criminal conviction or pled nolo contendere to an offense punishable as a felony, or to an offense punishable as a misdemeanor where the underlying facts in the original investigation and/or crime involve dishonesty, integrity, moral turpitude, or any gambling-related conduct.
 - (3) The Retailer conducts or conducted itself in a manner which adversely affects the security, honesty, fairness or integrity of the Lottery or Lottery games including, but not limited to, acts of dishonesty and/or moral turpitude.
 - (4) The Retailer or its employee(s), representative(s), or agent(s) has engaged in or permitted business practices or the Retailer has engaged in or is engaging in personal conduct that are indicative of dishonest, illegal, or criminal activity, ~~on or off the premises, that would tend to reflect unfavorably upon the public's perception of the integrity, security, honesty or fairness of the Lottery, Commission, or Lottery games.~~
 - (5) The best interests of the Lottery would be undermined by the Retailer's continuing to sell tickets or shares.

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- (6) The Retailer has participated in the sale of non-California Lottery tickets or has participated or assisted in the sale of Lottery tickets outside the State of California.
 - (7) The Retailer is not in compliance with the Lottery's ADA Compliance Program.
- e. The above reasons shall apply to each of the Retailer's contracts regardless of location.
- f. General Guidelines for Examining Applicants and Retailers
 - (1) The California Lottery Act at Government Code Section 8880.38 authorizes the examination of the qualifications and criminal history of all applicants and current Retailers. The Director or designee is authorized to develop policies and procedures based on these guidelines and shall consider these guidelines when conducting his/her examination and relevant mitigating and/or aggravating circumstances when approving or disapproving a contract or taking other action against the contract. Each applicant or Retailer shall be examined on a case-by-case basis in accordance with these Regulations and established policies and procedures.
 - (2) In determining whether to disapprove or approve an applicant or take administrative action against a Retailer's contract, the following shall be considered:
 - (a) The nature and severity of an offense.
 - (b) The underlying facts of the crime or other illegal conduct even if the charges were reduced to lesser charges.
 - (c) The length of time which has passed from the date of the offense or conviction to the date of the Lottery's examination.
 - (d) The applicant's or Retailer's documented pattern or tendency to engage in criminal activity.
 - (e) The occurrence of the criminal activity or offense on the applicant's or Retailer's business premises.
 - (f) The relationship of the criminal activity or offense to the Lottery's operations or to the Retailer's contractual obligations to sell Lottery tickets.

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- (g) The court-imposed penalty and/or terms of probation.
- (h) A federal or state administrative agency's disciplinary action against the Retailer or applicant.
- (i) The potential that the offense or criminal activity could endanger the integrity of the administration and operation of the Lottery in the public's perception.
- (j) The best interests of the Lottery to meet its statutory obligation.

- (k) The rehabilitation of the applicant or Retailer, as demonstrated to the satisfaction of the Director or designee. A false representation to the Lottery by either affirmative statement or omission for the purpose of obtaining a Retailer contract shall be evidence of a lack of rehabilitation.
- (l) In determining whether to disapprove an application or terminate a contract, the following provisions shall apply:
 - (i) Felony Conviction. As a general rule, an applicant will be disapproved or a Retailer will be terminated if ten (10) years have not elapsed from the date of a felony conviction. However, the Director or designee may determine that extraordinary circumstances exist which warrant an exception to the general rule.
 - (ii) Misdemeanor Conviction or Documented Criminal Offense Involving Dishonesty, Integrity, Moral Turpitude or Gambling. As a general rule, an applicant will be disapproved or a Retailer will be terminated if six (6) years have not elapsed from the date of such conviction or offense. However, the Director or designee may determine that extraordinary circumstances exist which warrant an exception to the general rule.

- g. If the Retailer fails to meet the sales requirements established for the Retailer by the Director, the Lottery may, at its discretion, terminate the contract or place the Retailer on probation.

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- h. When the Director determines that, due to a change in the type of games to be played, a change in the method by which games are to be played, a change in the method that the Lottery will use in servicing or contracting with Retailers, or for any other reason, that is in the best interest of the Lottery to terminate or change Retailers, the Director may terminate the Retailer contracts at any time upon thirty (30) days written notice to the Retailer of that type, class, or location, provided that at the same time, the Director terminates all other Retailer contracts for that type, class, or location. The affected Retailers shall be notified, in writing, of the Director's decision, the effective date of the action, and that they may not appeal the Director's decision.

8. APPLICANT AND RETAILER APPEAL PROCESS

- a. This appeal process consists of a written appeal submitted to the Director by the applicant or Retailer or his/her representative. The written appeal shall state the factual and/or legal arguments and mitigating and rehabilitation information supporting the applicant's or Retailer's appeal and shall include supporting information or documentation, if any.
- b. The appeal shall be filed with the Director at the address stated in the notice no later than fifteen (15) calendar days from the date that the Lottery mailed the notice. An appeal shall be deemed received by the Lottery if it is postmarked by the U.S. Postal Service or stamped received by the Lottery no later than fifteen (15) calendar days from the date of the mailing of the Lottery's notice, whichever occurs earlier. A Retailer's failure to submit a timely appeal shall constitute a waiver of any and all rights to appeal the Director's decision to terminate.
- c. The applicant or Retailer must provide any additional facts, documentation, or information requested by the Director.
- d. The applicant or Retailer shall be notified, in writing, of the Director's final decision to grant or deny the appeal, the reason(s) therefore, and the effect of the decision on the disapproved application or the termination of the Retailer's contract(s) within sixty (60) calendar days, and up to an additional 15 calendar days, from the Director's receipt of the appeal, documentation, and/or the additional documentation or information requested by the Director, whichever occurs later. The Director's decision on the appeal shall be final and conclusive.

9. RETAILER RESPONSIBILITIES UPON TERMINATION

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a. Payment of Funds owed to Lottery

Retailer shall pay all funds owed to the Lottery, by a method authorized and date specified by the Lottery.

b. Return of Lottery Property

Upon termination of the contract, or notification of the pending removal of computerized gaming equipment and/or Scratchers® vending machine for failing to meet sales requirements established for the Retailer by the Director, the Retailer may be required to: immediately surrender to an authorized Lottery representative the Retailer's Certificate of Authority and all Lottery property; return to the Lottery all unsold Lottery products; and take such further action as required by the Director.

10. GOVERNING LAW

All matters contained in these Regulations are governed by the California Lottery Act*; applicable state and federal law and regulations; Lottery regulations, procedures, directives, decisions, policies, and instructions; and the terms and conditions of the Retailer contract.

11. LOTTERY AS A RETAILER

- a. The Lottery is authorized to distribute, disseminate, and sell Lottery tickets or shares, and pay prizes of five hundred ninety-nine dollars (\$599) or less, directly to the public as part of promotions, promotional events, fairs, sponsorships, and similar activities conducted or participated in by the Lottery. The Lottery is not authorized to conduct on-going sales activities in direct competition with Retailers.
- b. The Director shall establish procedures for the acquisition of tickets or shares to be distributed, disseminated, or sold by the Lottery and for the security and accountability of such tickets or shares and disbursements for the payment of prizes.

12. RETAILER CONTRIBUTION PROGRAMS

The Director may establish Retailer contribution programs that in his or her discretion may reimburse up to one-half of the amount a Retailer or group of Retailers pays to purchase and/or maintain equipment used in the sale of Lottery products provided:

- a. The equipment is obtained from a Lottery Approved supplier.

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- b. The equipment furthers the purpose of the Lottery.
- c. The Director establishes a set of written program participation rules.
- d. The funds for use in the program have been approved and set aside in the Lottery's annual budget.

13. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

a. Definitions

As used in this Section:

- (1) "ADA" means that certain law commonly known as the Americans with Disabilities Act of 1990 (Pub.L. 101-336, 104 Stat. 327, 42 United States Code secs. 12101-12213), as amended from time-to-time.
- (2) "ADA Retailer compliance form" means a form prepared by the Lottery and used to survey Retailers and applicants in connection with the policy set forth in this Section.
- (3) "Disability" means the term as defined in the ADA at 42 United States Code Section 12102, subdivision (2), as amended from time-to-time. "Disabilities" shall mean the plural of "disability."
- (4) "Lottery playcenter" means a stand-alone device from which Lottery customers may obtain Lottery materials including, but not limited to, computerized game playslips and Lottery-related information.
- (5) "Point of purchase" means the specific site within the Retailer location where Lottery products are sold including, but not limited to, a sales counter, a self-service terminal or machine, or a retailer activated terminal at a sales or customer service counter. "Points of purchase" mean more than one point of purchase.

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- (6) "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense, as defined in the ADA and its implementing regulations. (See also sec. 13.c.(2).)
- (7) "Retailer location" means the premises at which one or more points of purchase or Lottery playcenters may be located.

b. Lottery Commission Policy

- (1) No Retailer shall discriminate against any individual on the basis of disability in the full and equal enjoyment of Lottery product, programs, services, and activities. Lottery products, programs, services, and activities shall be accessible and usable by individuals with disabilities to the extent required by law. All Retailers shall provide reasonable accommodation to individuals with disabilities by assisting them in the purchase of Lottery products and participation in Lottery programs, services, and activities and by allowing service animals and guide dogs.
- (2) Retailers are responsible for ensuring at their own expense that individuals with disabilities are provided with unobstructed access to and from Retailer locations, points of purchase, and Lottery playcenters.

c. Compliance

- (1) Every Retailer must provide reasonable accommodation to individuals with disabilities by assisting them in accessing Lottery programs, services, and activities and in purchasing and redeeming Lottery tickets and products.
- (2) The Retailer location must have an accessible path of travel to all Lottery products that the Retailer is authorized to sell, any associated Lottery materials, and Lottery playcenters. The Retailer is responsible for taking readily achievable steps to remove architectural barriers that may interfere with access to Lottery products and associated materials.

Factors to be considered in determining whether an action is readily achievable may include, but are not necessarily limited to:

- (a) The nature and cost of the action;
- (b) The overall size, type of operation and financial resources of the Retailer and, if applicable, its parent entities;
- (c) The number of persons employed at the Retailer location;

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- (d) The effect on expenses and resources;
 - (e) The impact of the action upon the operation of the Retailer location; and
 - (f) The legitimate safety requirements that are necessary for the safe operation of the Retailer location.
- (3) A Retailer shall, where barrier removal is not readily achievable, make Lottery products, programs, services, and activities available through alternative methods which are themselves readily achievable. (See factors listed in c.(2), above.) Examples of alternatives to barrier removal include, but are not limited to, providing curbside service or offering Lottery products and associated materials at accessible sites within the Retailer location. All claims that barrier removal is not readily achievable must be verified by an ADA consultant approved by the Lottery. Retailers shall continuously provide an alternative method of accessibility to individuals with disabilities.
- (4) Any facility that was designed and constructed for first occupancy on or after January 26, 1993, must be fully accessible to individuals with disabilities as provided in the ADA.

d. ADA Retailer Compliance Form and Inspection

- (1) Retailers and applicants shall complete an ADA Retailer compliance form at intervals and in a format to be determined by the Director. The Director shall determine accessibility standards for Retailers and applicants and such standards may vary between Retailers. When completing the ADA Retailer compliance form, Retailers and applicants shall certify whether they are in compliance with this policy.
- (2) Any Retailer or applicant who certifies on its ADA Retailer compliance form that it is in compliance with this Section is subject to random, unannounced inspections by Lottery at any time during the Retailer's or applicant's hours of operation to determine whether the statement is accurate.

e. Contract Termination or Disapproval

- (1) Any Retailer found to have made a false certification on its ADA Retailer compliance form shall be terminated in accordance with these regulations. Any applicant found to have made a false certification on its ADA Retailer compliance form shall be disapproved.

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- (2) Any Retailer who is not in compliance with this Section will be terminated in accordance with these regulations unless the Retailer certifies that it will become compliant with this Section within one-hundred and eighty (180) days and provides a plan with a schedule detailing how and when it will achieve compliance. The plan shall address the steps that the Retailer will take to remove architectural barriers. The Retailer shall be terminated, in accordance with these regulations, if it does not fully implement its plan during the time period.

f. Complaints Regarding Non-Accessibility

Any complaints regarding non-accessibility of Lottery products, programs, services, and activities to individuals with disabilities shall be directed to Lottery Headquarters for investigation. The name and address of the alleged non-compliant Retailer should be provided to the Lottery for use in the investigation.

(Adopted March 14, 1990; amended: February 21, 1991; February 20, 1992; May 27, 1992; October 20, 1995; May 23, 1995; September 5, 1997; October 17, 1997; June 19, 1998; December 6, 2002)

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